TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 523.

GEORGE W. ALLEN, ADMINISTRATOR OF THE ESTATE OF JOHN J. PHILBRICK, DECEASED, PLAINTIFF IN ERROR,

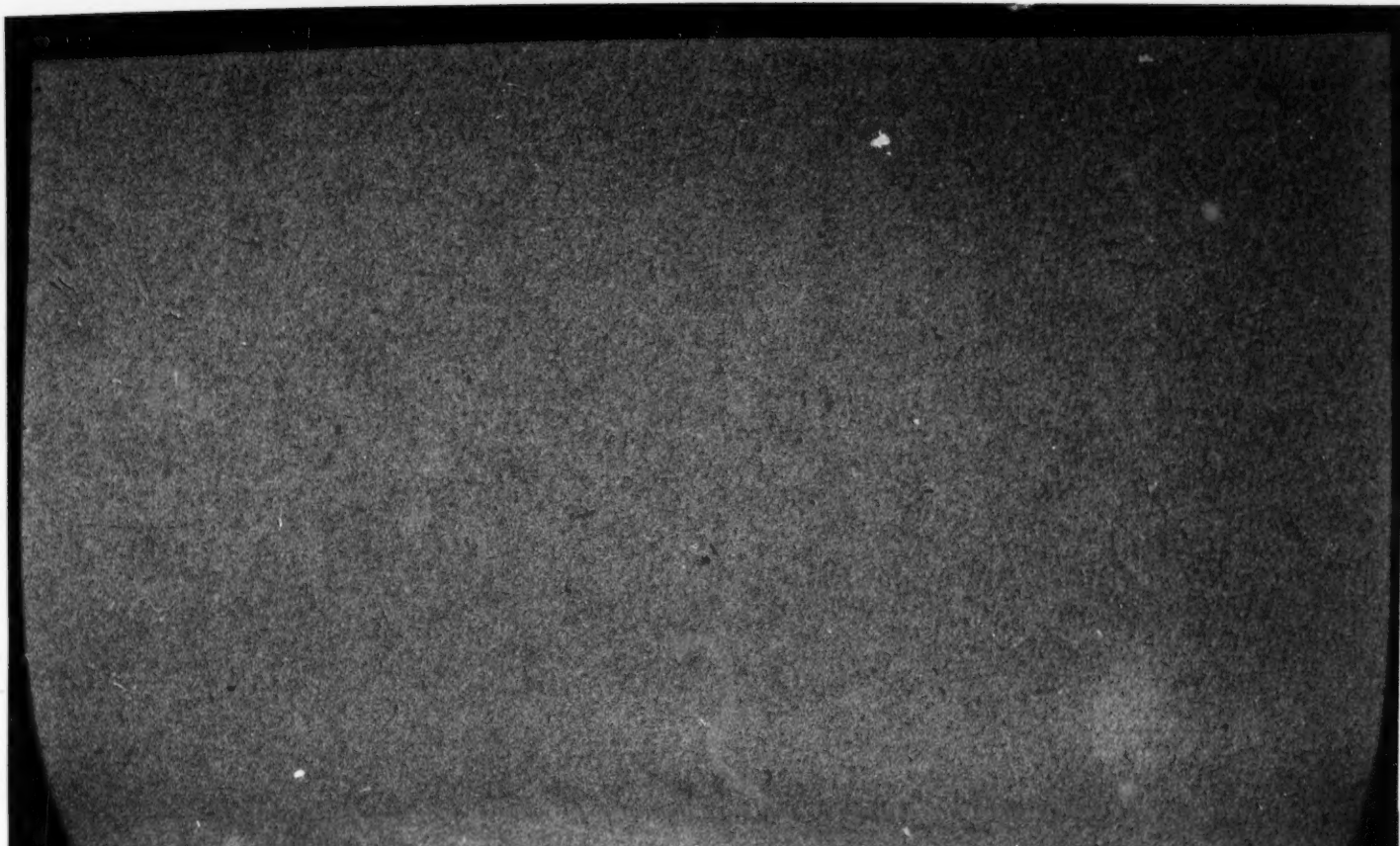
vs.

FRANK M. ARGUIMBAU, AS SURVIVING PARTNER OF THE COPARTNERSHIP COMPOSED OF FREDERICK A. SCHROEDER, EDWIN A. SCHROEDER, AND FRANK M. ARGUIMBAU, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF SCHROEDER & SON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED FEBRUARY 1, 1905.

(19,623.)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 11, 1905.

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1 STATE OF FLORIDA:

In the Supreme Court.

Be it remembered that heretofore, to-wit: on the 12th day of January, 1904, the same being the first day of the January term, 1904, of the supreme court of the State of Florida, came the plaintiff in error, George W. Allen as administrator of the estate of John J. Philbrick, deceased, by his counsel and filed in the clerk's office of the supreme court of the State of Florida a transcript of record of the proceedings and judgment of the circuit court of the State of Florida for Monroe county, in a certain cause wherein Frank M. Arguimbau as surviving partner of the late firm of Schroeder & Bon, was a plaintiff and George W. Allen as administrator of the estate of John J. Philbrick, deceased, was defendant, and of the writ of error therein to the judgment of the circuit court therein rendered, which said transcript of record of the cause aforesaid and subsequent proceedings to judgment and writ of error therefrom is in the words and figures as follows, to-wit:

2 Transcript of record of proceedings in the circuit court of Monroe county, Florida, in the suit of Frank M. Arguimbau, as surviving partner of the late firm of Schroeder & Bon, plaintiff, *vs.* George W. Allen, as administrator of the estate of John J. Philbrick, deceased, defendant, therein pending.

On the 5th day of February, 1898, the original plaintiffs, Frederick A Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, as partners doing business under the firm name and style of Schroeder & Bon, filed their declaration in the words and figures following:

In the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Monroe County,

FREDERICK A. SCHROEDER, EDWIN A. SCHROEDER, and Frank M. Arguimbau, as Partners, Doing Business under the Firm Name and Style of Schroeder & Bon, *vs.* HERMAN L. STRICKER, as Administrator of All and Singular the Goods, Chattels, and Credits Which Were of John Jay Philbrick, Deceased.	Assumpsit. Damages, $10,000.00.

Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, as part ners doing business under the firm name and style

of Schroeder & Bon, by Sparkman & Sparkman and Jefferson B. Browne, their attorneys, complain of Herman L. Stricker as administrator of all and singular the goods, chattels and credits which were of John Jay Philbrick, deceased, at the time of his death,
3 who died intestate who has been summoned to answer them upon an action on promises.

For that whereas the said John Jay Philbrick during his life time, to wit, on the 18th day of March, 1893, together with George W. Allen and Charles B. Pendleton by their two promissory notes now overdue, jointly and severally promised to pay to Horace R. Kelly, five thousand dollars two years after the date thereof; and the said Horace R. Kelly for a valuable consideration then and there endorsed the said notes to the Horace R. Kelly & Company, Limited, and the said Horace R. Kelly & Company Limited for a valuable consideration then and there endorsed the said notes to the plaintiffs, whereof the said John Jay Philbrick then and there had notice, and then and there in consideration of the premises promised to pay the amount of said notes to the plaintiffs according to the tenor and effect thereof, but did not pay the same.

And afterwards, to wit, on the 14th day of Sept. 1897, the said John Jay Philbrick died intestate, and on the 18th day of Sept. 1897 the said defendant was duly appointed as administrator of all and singular the goods, chattels and credits of the said John Jay Philbrick, deceased, and although often requested so to do has not paid the said notes to the plaintiffs' damage of ten thousand dollars.

And thereupon they bring suit, etc.

SPARKMAN & SPARKMAN AND
JEFFERSON B. BROWNE,
Attorneys for Plaintiffs.

4 $2500.00. KEY WEST, FLORIDA, March 18th, 1893.

Two years after date, we or either of us, promise to pay Horace R. Kelly, or order, the sum of twenty-five hundred dollars at Key West, Florida.

JOHN JAY PHILBRICK.
GEORGE W. ALLEN.
CHAS. B. PENDLETON.

(Endorsed:) Pay to the order of Horace R. Kelly & Co. Ltd. Horace R. Kelly & Co. Ltd. Per Horace R. Kelly, pres't.

$2500.00. KEY WEST, FLORIDA, March 18th, 1893.

Two years after date we or either of us promise to pay Horace R. Kelly or order the sum of twenty-five hundred dollars, at Key West, Florida.

JOHN JAY PHILBRICK.
GEO. W. ALLEN,
C HAS. B. PENDLETON.

(Endorsed:) Pay to the order of Horace R. Kelly & Co., Ltd.— Horace R. Kelly. Horace R. Kelly & Co. Ltd. Per Horace R. Kelly, pres't.

On the 7th day of March, 1898, the defendant Herman L Stricker filed the following plea:

5 Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Monroe County.

FREDERICK A. SCHROEDER, EDWIN A. Schroeder, and Frank M. Arguimbau, as Partners, Doing Business under the Firm Name and Style of Schroeder & Bond, vs. HERMAN L. STRICKER, as Administrator of All and Singular the Goods, Chattels, and Credits Which Were of John Jay Philbrick, Deceased.	Assumpsit. Damages, $10,000.00.

The defendant by G. Bowne Patterson, his attorney, says: That on the 18th day of March, A. D. 1893, Horace R. Kelly, claiming to be a manufacturer of cigars, agreed with John Jay Philbrick during his lifetime, that if he the said Philbrick together with George W. Allen and Charles B. Pendleton, would give to him their four (joint) promissory notes for $2500.00 each, two of said notes payable in one year from said date and two payable in two years from said date, he the said Horace R. Kelly would manufacture cigars in Key West; that the said notes in this action are two of the said four notes made and delivered to the said Horace R. Kelly by the said John Jay Philbrick, George W. Allen, and C. B. Pendleton in consideration of the promises and agreements aforesaid of the said Horace R. Kelly. That the consideration for which said notes were given wholly failed, said Horace R. Kelly failing to manufacture cigars in Key West as agreed and he refuses to perform the promises and agreements on his part in consideration for which the notes here sued on were given. That the said Horace R. Kelly Co. Limited, was never, and the said plaintiffs are not, *bona fide* holders of said notes for value, and in fact were never
6 holders of said notes for value, nor owners of said notes; that the said Horace R. Kelly Co., Limited, and the plaintiffs at the time of the alleged transfer of the said notes to them, had full knowledge of the said contract between the said John Jay Philbrick and the said Horace R. Kelly, and the failure of consideration for which said notes were given, and the transfer of the said notes to them was fraudulent and made to the said Horace R. Kelly Co., Limited, and to plaintiffs with their full knowledge and consent, in

fraud of the rights of the said John Jay Philbrick, and with the intent to prevent him from defending against a suit on said notes.

All of which said defendant is ready to verify.

HERMAN L. STRICKER,
Administrator.

Herman L. Stricker, being defendant in above cause, being duly sworn says that the foregoing plea is true to the best of his knowledge and belief.

HERMAN L. STRICKER.

Sworn to and subscribed before me this 7th day of March, A. D. 1898.

[NOTARIAL SEAL.]

GEO. L. LOWE,
Notary Public, State of Florida at Large.

On the 31st day of January, 1900, the plaintiffs filed the following suggestion of substitution and order of court:

7 In the Circuit Court of the Sixth Judicial Circuit of the State of Florida for Monroe County.

SHROEDER & BON
vs.
HERMAN L. STRICKER, as Administrator of John J. Philbrick, Deceased.

Now come the plaintiffs in the above entitled cause and show unto the court that since the last continuance of this cause, Herman L. Stricker has resigned as administrator and George W. Allen has been appointed administrator of John J. Philbrick instead of said Herman L. Stricker; and thereupon the plaintiffs pray that said suit may proceed against the said George W. Allen as administrator.

SPARKMAN & CARTER,
Attorneys for Plaintiffs.

The foregoing petition is granted and it is ordered that the name of George W. Allen as administrator be substituted for that of Herman L. Stricker.

Jan'y 31st, 1900.

J. B. WALL, Judge.

On the 25th day of January, 1900, the defendant filed the following pleas:

8 In the Circuit Court, Sixth Judicial Circuit of the State of Florida in and for Monroe County.

FREDERICK A. SCHROEDER, EDWIN A. SCHROEDER, and Frank M. Arguimbau, Partners, Doing Business under the Firm Name and Style of Schroeder & Bon, *vs.* GEORGE W. ALLEN, as Administrator of All and Singular the Goods, Chattels, and Credits Which Were of John J. Philbrick, Deceased.	Assumpsit. Damages, $10,000.

1. And now comes the defendant, by his attorneys, George Bowne Patterson and Macfarlane & Shackleford, and says that on or about the 18th day of March, A. D. 1893, Horace R. Kelly, claiming to be a manufacturer of cigars, agreed with John Jay Philbrick, during his lifetime, that if he, the said Philbrick, together with George W. Allen and Charles B. Pendleton, would give him their four joint and several promissory notes, for two thousand five hundred dollars each, two of said notes payable in one year from said date and two payable in two years from said date, he, the said Horace R. Kelly, would manufacture cigars in Key West and at no other place. That the said notes in this action are two of the said four notes made and delivered to the said Horace R. Kelly by the said John Jay Philbrick, George W. Allen and Charles B. Pendleton in consideration of the premises and agreements aforesaid of the said Horace R. Kelly. That the consideration for which said notes were given wholly failed, because the said Horace R. Kelly failed and refused to manufacture cigars in Key West, as agreed, and he still fails and refuses to perform the promises and agreements on his part in con-

9 sideration for which the notes here sued on were given. That the said Horace R. Kelly & Company, Limited, was never, and the said plaintiffs are not, *bona fide* holders of said notes for value, and, in fact, were never holders of said notes for value, nor owners of said notes. That the said Horace R. Kelly & Company, Limited, and the plaintiffs, at the time of the alleged transfer of said notes to them, had full knowledge of the said contract between the said John Jay Philbrick and the said Horace R. Kelly and the failure of consideration for which said notes were given, and the transfer of said notes to them was fraudulent and made to the said Horace R. Kelly & Company, Limited, and to the plaintiffs with their full knowledge and consent in fraud of the rights of the said John Jay Philbrick and with the intent to prevent him from defending a suit on said notes; all of which the defendant is ready to verify.

2. And for a further plea the defendant, by his attorneys aforesaid, says that on or about the 18th day of March, A. D. 1893, Horace R. Kelly, claiming to be a manufacturer of cigars, agreed with John Jay Philbrick, during his lifetime, that if he, the said

Philbrick, together with George W. Allen and Charles B. Pendleton, would give to him their four joint and several promissory notes, for two thousand five hundred dollars each, two of said notes payable in one year from the date thereof and two payable in two years from the date thereof, he, the said Horace R. Kelly, would have cigars manufactured in Key West, Florida, and at no other place, according to the terms of his contract with the Havana & Key West Cigar Company, Limited. That the said contract referred to was a contract between the said Horace R. Kelly and one Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, and in said contract the said Horace R. Kelly bound himself to have the said Horace R. Kelly & Company, Limited, a corporation then existing judicially
10 dissolved and after said dissolution, together with himself and others, to organize a company under the laws of the State of West Virginia, to be known as the Horace R. Kelly Company. That the said Horace R. Kelly Company, when so formed, was to enter into an agreement with the Havana & Key West Cigar Company, Limited, whereby it, in its factory at Key West, State of Florida, was to manufacture cigars and, before the same had been placed in packages or boxes as required by law and stamped as required by law, to sell the said cigars to the said Horace R. Kelly Company, and then and there to pack the same in boxes stamped with the number of a factory assigned to the said Horace R. Kelly Company by the collector of internal revenue of the United States and under labels of the said Horace R. Kelly Company and to place internal revenue stamps thereon as and for the Horace R. Kelly Company and cancel the same in its name, to keep a revenue book and make entries therein in the name of the said Horace R. Kelly Company and to do all things under the law necessary to have it appear as if the cigars had been made in a factory operated by the said Horace R. Kelly Company, when, in truth and in fact, the said cigars had been manufactured in a factory operated by the said Havana & Key West Cigar Company, Limited; all of which was contrary to law. And the said promissory notes sued on are two of the notes made and delivered to the said Horace R. Kelly in consideration of the promises and agreements aforesaid and are wholly void; all of which the said plaintiffs well knew at the time of the alleged transfer of the said notes to them. And this the defendant is ready to verify.

3. And for a further plea the defendant, by his attorneys aforesaid, says that on or about the 18th day of March, A. D. 1893, Horace R. Kelly, claiming to be a manufacturer of cigars, agreed with John J. Philbrick, during his lifetime, that if he, the said
11 Philbrick, together with George W. Allen and Charles B. Pendleton, would give to him their four joint and several promissory notes, for two thousand five hundred dollars each, two of said notes payable in one year from the date thereof and two payable in two years from the date thereof, he, the said Horace R.

Kelly, would have cigars manufactured in Key West, Florida, and in no other place, according to the terms of his contract with the Havana & Key West Cigar Company, Limited. That the said contract referred to was a contract between the said Horace R. Kelly and one Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, and in said contract the said Horace R. Kelly bound himself to have the said Horace R. Kelly & Company, Limited, a corporation then existing, judicially dissolved and after said dissolution, together with himself and others, to organize a company under the laws of the State of West Virginia, to be known as the Horace R. Kelly Company. That the said Horace R. Kelly Company, when so formed, was to enter into an agreement with the Havana & Key West Cigar Company, Limited, whereby the said Horace R. Kelly Company was to procure a factory number, or factory numbers, and hold itself forth as a manufacturer of cigars in the city of Key West, State of Florida, and its cigars were to be manufactured from the tobacco owned and possessed by the Havana & Key West Cigar Company, Limited, in its building and in the same room occupied by its cigar makers and its cigars were to be packed in the boxes of the factory of the said Horace R. Kelly Company in the same room where the cigars of the Havana & Key West Cigar Company, Limited, were packed, and the cigars were to be manufactured for the said Horace R. Kelly Company by the cigar makers employed and paid by the said Havana & Key
12 West Cigar Company, Limited, and the said cigars were to be picked and packed by pickers and packers employed and paid by the Havana & Key West Cigar Company, Limited, and the said cigars delivered to the said Horace R. Kelly Company at a certain price per thousand; all of which was contrary to law. And the said promissory notes sued on are two of the notes made and delivered to the said Horace R. Kelly in consideration of the promises and agreements aforesaid and are wholly void; all of which the said plaintiffs well knew at the time of the alleged transfer of said notes to them. And this the defendant is ready to verify.

G. BOWNE PATTERSON &
MACFARLANE & SHACKLEFORD,
Attorneys for Defendant.

STATE OF FLORIDA,
County of Monroe.

I, George W. Allen, administrator of the estate of John J. Philbrick, deceased, being first duly sworn, depose and say that the matters and things contained in the foregoing pleas are true.

GEORGE W. ALLEN.

Subscribed and sworn to before me this 25 day of January, A. D. 1900.

GEO. W. REYNOLDS,
Clerk Ct. Ct.

13 On the 31st day of January, 1900, the plaintiffs filed the following demurrer to defendant's pleas:

In the Circuit Court of the Sixth Judicial Circuit of the State of Florida for Monroe County.

SCHROEDER & BON
vs.
GEORGE W. ALLEN, as Administrator of John J. Philbrick, Deceased.

Now come the plaintiffs in the above entitled cause and say that the second and third pleas filed by the defendant are bad in substance and in law and demur thereto.

SPARKMAN & CARTER,
Attorneys for Plaintiffs.

And, for substantial matters of law to be argued to the court, state the following:

1st. That said pleas, and neither of them, state any matter that constitutes a good defense to the suit brought by the plaintiffs; and

2nd. For other matters apparent on the face of said pleas.

SPARKMAN & CARTER,
Attorneys for Plaintiffs.

STATE OF FLORIDA,
County of Hillsborough.

Before the undersigned authority personally appeared W. A. Carter, who being duly sworn deposes and says that he is of counsel for plaintiffs in the above entitled cause, and that the foregoing demurrer is not interposed for delay.

W. A. CARTER.

Sworn to and subscribed before me this 22 day of January, A. D. 1900.

[SEAL.] SAM'L BORCHARDT,
Notary Public.

I hereby certify that the foregoing demurrer is well founded in point of law.

W. A. CARTER,
Attorney for Plaintiffs.

14 On the 24th day of March, 1900, the defendant filed the following amended pleas:

In the Circuit Court, Sixth Judicial Circuit of the State of Florida in and for Monroe County.

FREDERICK A. SCHROEDER, EDWIN A. Schroeder, and Frank M. Arguimbau, Copartners, Doing Business under the Firm Name and Style of Schroeder & Bon,	Assumpsit. Damages, $10,000.
vs.	
GEORGE W. ALLEN, Adm'r of the Estate of John Jay Philbrick, Deceased.	

And now comes the defendant, by his attorneys, G. Bowne Patterson and Macfarlane & Shackleford, and files these his amended pleas, and for a further plea says that on or about the 18th day of March, A. D. 1893, Horace R. Kelly, claiming to be a manufacturer of cigars, agreed with John Jay Philbrick, during his lifetime, that if he, the said John Jay Philbrick, together with George W. Allen and Charles B. Pendleton, would give to him their four joint and several promissory notes for two thousand five hundred dollars each, two of the said notes payable in one year from the date thereof and two payable in two years from the date thereof, he, the said Horace R. Kelly, would have cigars manufactured in Key West, Florida, and in no other place, according to the terms of his contract with the Havana & Key West Cigar Company, Limited; that the said contract referred to was a contract between the said Horace R. Kelly and one Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, and in said contract the said Horace R. Kelly bound himself to have the said Horace R. Kelly Company, Limited, a corporation then existing, judicially dissolved and after said dissolution, together with himself and others, to organize a company under the laws of the State of West Virginia to be known as the Horace R. Kelly Company; that the said Horace R. Kelly Company, when so formed, was to enter into an agreement with the Havana & Key West Cigar Company, Limited, whereby it, in ~~its~~ factory at Key West, Florida, was to manufacture cigars and to fill all orders for cigars secured by the said Horace R. Kelly Company, provided such orders should be approved by the president or manager of the Havana & Key West Cigar Company, Limited. And it was then and there understood and agreed by and between the said Horace R. Kelly and the said Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, that the cigars so manufactured as aforesaid by the Havana & Key West Cigar Company, Limited, at its factory at Key West, Florida, to fill the orders for cigars secured by the said Horace R. Kelly Company were to be removed from said factory or place where said cigars were made without being packed in boxes on which should be stamped, indented, burned or impressed into each box, in a legible

and durable manner, the number of cigars contained therein and the number of the manufactory in which the said cigars had been manufactured. That at the time of the making of said contract and understanding and agreement between the said Horace R. Kelly and the said Max T. Rosen, president of the Havana & Key West Cigar Company, Limited, the laws of the United States regulating the manufacture, removal and sale of cigars provided that, before any cigars were removed from any manufactory or place where cigars were made, they should be packed in boxes and that there
16 should be stamped, indented, burned or impressed into each box, in a legible and durable manner, the number of cigars contained therein and the number of the manufactory where said cigars were made, and affixed a penalty for the non-compliance therewith; and the said promissory notes sued on are two of the notes made and delivered to the said Horace R. Kelly in consideration of the promises and understandings and agreements aforesaid and are wholly void; all of which the said plaintiffs well knew at the time of the alleged transfer of the said notes to them; and this the defendant is ready to verify.

2. And for a further plea this defendant says that on or about the 18th day of March, A. D. 1893, Horace R. Kelly, claiming to be a manufacturer of cigars, agreed with John Jay Philbrick, during his lifetime, that if he, the said John Jay Philbrick, together with George W. Allen and Charles B. Pendleton, would give to him their four joint and several promissory notes for two thousand five hundred dollars each, two of the said notes payable in one year from the date thereof and two payable in two years from the date thereof, he, the said Horace R. Kelly, would have cigars manufactured in Key West, Florida, and in no other place, according to the terms of his contract with the Havana & Key West Cigar Company, Limited; that the said contract referred to was a contract between the said Horace R. Kelly and one Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, and in said contract the said Horace R. Kelly bound himself to have the said Horace R. Kelly & Company, Limited, a corporation then existing, judicially dissolved and after said dissolution, together with himself and others, to organize a company under the laws of the State of West Virginia to be known as the Horace R. Kelly Company;
that the said Horace R. Kelly Company, when so formed, was
17 to enter into an agreement with the Havana & Key West Cigar Company, Limited, whereby it, in its factory at Key West, Florida, was to manufacture cigars and to fill all orders for cigars secured by the said Horace R. Kelly Company, provided such orders should be approved by the president or manager of the Havana & Key West Cigar Company, Limited. And it was then and there understood and agreed by and between the said Horace R. Kelly and the said Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, that the said Havana & Key West Cigar Company, Limited, was not to securely affix, by pasting

on each box containing cigars manufactured by or for it, a label on which should be printed, besides the number of its manufactory and the district and State in which it was situated, these words: "Notice.—The manufacturer of the cigars herein contained has complied with all the requirements of law. Every person is cautioned not to use either this box for cigars again or the stamp thereon again, nor to remove the contents of this box without destroying said stamp, under the penalties provided by law in such cases." That at the time of the making of said contract and understanding and agreement between the said Horace R. Kelly and the said Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, the laws of the United States regulating the manufacture, removal and sale of cigars provided that "every manufacture of cigars shall securely affix, by pasting on each box containing cigars manufactured by or for him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: 'Notice.—The manufacturer of the cigars herein contained has complied with all the requirements of law. Every person is cautioned not
18 to use either this box for cigars again, or the stamp thereon again, nor to remove the contents of this box without destroying said stamp, under the penalties provided by law in such cases;' and affixed a penalty for the non-compliance therewith. And the said promissory notes sued on are two of the notes made and delivered to the said Horace R. Kelly in consideration of the premises and undertakings and agreements aforesaid and are wholly void; all of which the said plaintiffs well knew at the time of the alleged transfer of the said notes to them. And this the defendant is ready to verify.

3. And for a further plea defendant says that on or about the 18th day of March, A. D. 1893, Horace R. Kelly, claiming to be a manufacturer of cigars, agreed with John Jay Philbrick, during his lifetime, that if he, the said John Jay Philbrick, together with George W. Allen and Charles B. Pendleton, would give to him their four joint and several promissory notes for two thousand five hundred dollars each, two of the said notes payable in one year from the date thereof and two payable in two years from the date thereof, he, the said Horace R. Kelly, would have cigars manufactured in Key West, Florida, and in no other place, according to the terms of his contract with the Havana & Key West Cigar Company, Limited; that the said contract referred to was a contract between the said Horace R. Kelly and one Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, and in said contract the said Horace R. Kelly bound himself to have the said Horace R. Kelly & Company, Limited, a corporation then existing, judicially dissolved and after said dissolution, together with himself and others, to organize a company under the laws of the State of West Virginia to be known as the Horace R. Kelly Com-
19 pany; that the said Horace R. Kelly Company, when so formed, was to enter into an agreement with the Havana &

Key West Cigar Company, Limited, whereby it, in its factory at Key West, Florida, was to manufacture cigars and to fill all orders for cigars secured by the said Horace R. Kelly Company, provided such orders should be approved by the president or manager of the Havana & Key West Cigar Company, Limited. And it was then and there understood and agreed by and between the said Horace R. Kelly and the said Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, that the said Havana & Key West Cigar Company, Limited, should not enter daily in a book, the form of which was prescribed by the Commissioner of Internal Revenue, an accurate account of the quantity of cigars, stems, or cigar boxes, of whatever description manufactured, sold, consumed, or removed for consumption or sale, or removed from its place of manufacture, and that it should not, on or before the 10th day of each and every month, furnish to the collector of the district a true and accurate abstract from said book, verified by oath, of all such sales and removals made during the month next preceding. And at the time of the making of said contract, understanding and agreement between the said Horace R. Kelly and the said Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, the laws of the United States regulating the manufacture, removal and sale of cigars provided that every person now or hereafter engaged in the manufacture of cigars should daily enter in a book, the form of which should be prescribed by the Commissioner of Internal Revenue, an accurate account of the quantity of cigars, stems, or cigar boxes, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from the place of manufacture, and should, on or before the 10th day of each and every month, furnish to the collector of the district a true and accurate abstract from such book, verified by his oath, of all such purchases, sales and removals made during the month next preceding, and affixed a penalty for the non-compliance therewith. And the said promissory notes sued on are two of the notes made and delivered to the said Horace R. Kelly in consideration of the promises and understandings and agreements aforesaid and are wholly void; all of which the said plaintiffs well knew at the time of the alleged transfer of the said notes to them. And this the defendant is ready to verify.

4. And for a further plea this defendant says that on or about the 18th day of March, A. D. 1893, Horace R. Kelly, claiming to be a manufacturer of cigars, agreed with John Jay Philbrick, during his lifetime, that if he, the said John Jay Philbrick, together with George W. Allen and Charles B. Pendleton, would give to him their four joint and several promissory notes for two thousand five hundred dollars each, two of said notes payable in one year from the date thereof and two payable in two years from the date thereof, he, the said Horace R. Kelly, would have cigars manufactured in Key West, Florida, and in no other place, according to the terms of his contract with the Havana & Key West Cigar Company.

Limited; that the said contract referred to was a contract between the said Horace R. Kelly and one Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, and in said contract the said Horace R. Kelly bound himself to have the said Horace R. Kelly & Company, Limited, a corporation then existing, judicially dissolved and after said dissolution, together with himself and others, to organize a company under the laws of the
21 State of West Virginia to be known as the Horace R. Kelly Company; that the said Horace R. Kelly Company, when so formed, was to enter into an agreement with the Havana & Key West Cigar Company, Limited, whereby it, in its factory at Key West, Florida, was to manufacture cigars and to fill all orders secured by the said Horace R. Kelly Company, provided such orders should be approved by the president or manager of the Havana & Key West Cigar Company, Limited. And it was then and there understood and agreed by and between the said Horace R. Kelly and the said Max T. Rosen, the president of the Havana & Key West Cigar Company, Limited, that the business of the Horace R. Kelly Company should be confined to the selling of goods exclusively and that the said Horace R. Kelly should attend to the selling of goods for the said Horace R. Kelly Company and should individually pay all expenses connected with such sales; that he should devote himself exclusively to the sale of goods for the said company to be manufactured by the said Havana & Key West Cigar Company, Limited, excepting that he should have the privilege to sell for his individual account cigars that retail for five cents not manufactured by the said Havana & Key West Cigar Company, Limited. And the said promissory notes sued on are two of the notes made and delivered to the said Horace R. Kelly in consideration of the promises and understandings and agreements aforesaid. And the said Havana & Key West Cigar Company, Limited, did not fill all orders for cigars secured by the said Horace R. Kelly Company when such orders were approved by the president or manager of the said Havana & Key West Cigar Company, Limited, and the said Horace R. Kelly Company did not confine itself to the selling of goods exclusively and the said Horace R. Kelly did not devote him-
22 self exclusively to the selling of goods for the said Horace R. Kelly Company to be manufactured by the Havana & Key West Cigar Company, Limited, excepting cigars that retail for five cents not manufactured by the Havana & Key West Cigar Company, Limited; but the said Horace R. Kelly Company, when organized under the provisions of the said agreement above mentioned, became licensed manufacturers of cigars in the city of Key West and State of Florida and filled the orders for cigars that retailed for more than five cents secured by it to its own customers. And the defendant says that the plaintiffs had notice of all the matters hereinbefore set forth at the time of the alleged transfer of the said notes to them, and so the defendant says that the consideration

upon which the said notes sued on was made has wholly failed; and this the defendant is ready to verify.

G. BOWNE PATTERSON &
MACFARLANE & SHACKLEFORD,
Attorneys for Defendant.

STATE OF FLORIDA,
County of Monroe.

I, George W. Allen, being duly sworn, depose and say that I have read the foregoing pleas interposed in my behalf and know the contents thereof and that the same *is* true.

GEORGE W. ALLEN.

Sworn to and subscribed before me this 24th day of M'ch, A. D. 1900.

[NOTARIAL SEAL.] E. W. RUSSELL,
D'p'ty Cl'k C't Ct.

23 On the 5th day of January, 1903, the plaintiff filed suggestions of death of Edwin A. Schroeder and Frederick A. Schroeder, in the words and figures following:

In the Circuit Court for Monroe County, Florida.

SCHROEDER & BON, Plaintiffs,
vs.
GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick, Deceased, Defendant.

Now comes the plaintiff Frank M. Arguimbau, by Bisbee & Bedell, their attorneys, and suggest the death of Edwin A. Schroeder, who died on the 14th day of October, A. D. 1902, and of Frederick A. Schroeder, who died about Dec. 1st, 1899, and pray that the said action may be proceeded with in their names as such surviving partners of the late firm of Schroeder & Bon.

BISBEE & BEDELL,
Attorneys for Plaintiffs.

24 On the 16th day of January, 1902, plaintiff filed the following demurrer to defendant's pleas:

In the Circuit Court, Monroe County, Florida.

FRANK M. ARGUIMBAU, as Surviving Partner of the Late Firm of Schroeder & Bon,
vs.
GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick.
} Demurrer to Pleas.

Comes now the plaintiff by Bisbee & Bedell, his attorneys, and demurs to the said defendant's 2nd plea, filed January 25, 1900, on the following grounds:

1st. Because the facts of said plea constitute no defense.

2nd. Because the real consideration for the notes sued on was the promise of the said Kelly to have cigars manufactured in Key West, and the plea alleges no breach of the said promise, but admits he did have cigars manufactured in Key West.

3rd. Because the defendant's intestate derived the same benefit and advantage from the manufacture of cigars, by and through Horace R. Kelly, and the said Horace R. Kelly Company, under the alleged contract between the latter and a third party, whether said contract was legal or illegal and void; and said plea does not show that the General Government prevented the manufacture of cigars under said contract or made any objection thereto.

And the plaintiff demurs to the said 3rd plea by the said defendant filed January 25, 1900, on the following grounds:

1st. Because the facts therein constitute no defense to the action.

2nd. Because the real consideration of the said notes sued on, was the promise of Kelly to have or cause cigars to be manufactured in Key West, and said plea does not allege any breach of the said promise.

3rd. Because, even if the said alleged contract between the two companies therein named, was illegal or void, said plea does not show that the said intestate or defendant was injured thereby.

And plaintiff demurs severally to the four pleas filed by the said defendant March 24, 1900, on the following grounds:

1st. Because the facts stated in each plea, constitute no defense to the action.

2nd. Because the real consideration for the notes sued on was Kelly's promise to manufacture cigars in Key West, and neither of the said pleas alleges a breach of such promise.

3rd. Neither of the said pleas state facts showing the alleged contract between the said two companies was illegal or void.

4th. Even if the said contract between the said two companies was illegal or void, neither plea shows that said intestate or defendant was injured thereby.

And plaintiff demurs severally to each of the four pleas filed by Allen as administrator of the estate of John J. Philbrick on March 24th, 1900 on the following grounds:

1st. Because neither of said pleas state facts constituting any defense.

2nd. Because the consideration of the notes sued on was the promise of Horace R. Kelly to have cigars manufactured in Key West, and no one of said pleas alleges a breach of said promise.

26 3rd. No one of said pleas avers that the alleged proposed contract between the two companies in said pleas stated, and alleged to be illegal, was ever consummated or executed or anything done thereunder.

4th. That if cigars were manufactured in Key West, under the said contract between the said two companies in the said pleas stated, the defendant and his intestate derived the same benefit and received the same consideration for the said notes, whether said contract was legal or illegal.

BISBEE & BEDELL,
For Plaintiff.

And the plaintiff demurs to the first plea filed by Allen, as administrator, on the 25th day of January, A. D. 1900, upon the following grounds:

1st. Because said plea does not state facts constituting any defense to the action.

2nd. Because said plea does not specify wherein the consideration of said notes failed.

3rd. Because the consideration of said notes was, Horace R. Kelly's *promise* to have cigars manufactured at Key West, and not the performance of the said promise as shown by the said plea.

4th. Because so much of the said plea as avers that plaintiff was never the holder of the said notes for value, is immaterial, argumentative and states a legal conclusion.

5th. That the allegation of notice to plaintiff of the contract in the said plea stated, is immaterial.

6th. That the averment that the transfer of the said notes
27 to plaintiff was fraudulent, avers a conclusion and states no facts showing a fraudulent transfer of the said notes.

7th. For other grounds appearing on the face of the said plea, and especially that the plea does not allege that plaintiff before he acquired the said note, had notice of any breach by Kelly of his promise.

STATE OF FLORIDA, }
Duval County, } *ss:*

Personally appeared before me H. Bisbee, who being sworn says that he is one of the attorneys for the said plaintiff, and that the foregoing demurrers are not interposed for delay.

Subscribed and sworn to this 15th day of Jan'y, 1903.

——— ———.

I hereby certify that I believe the foregoing demurrers are well founded in law.

H. BISBEE.

Affidavit to the foregoing demurrers is hereby waived.

MACFARLANE & GLEN,
Att'ys for Def't.

In Circuit Court, Monroe County, State of Florida.

28 FRANK M. ARGUIMBAU, Surviving Partner of the Firm of Schroeder & Bon, Plaintiffs,
vs.
GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick, Deceased, Defendant.

Replications and Withdrawal of Original Replications.

Comes now the said plaintiff by Bisbee & Bedell, his attorneys and takes issue upon the plea filed November 4, 1895 by all of the original defendants in this action; and takes issue upon the plea filed by Herman Striker as administrator of the estate of John J. Philbrick on the 7th day of March, 1898, except so much of the said pleas as admit the making of the said notes declared on.

2. And the plaintiff hereby withdraws the replications filed by all of the original defendants, Allen, Philbrick and Pendleton, on the 10th day of August, 1896.

BISBEE & BEDELL,
For Plaintiff.

On the 17th day of January, 1903, the court, after due notice given of the hearing, made the following ruling upon said demurrers:

Sixth Judicial Circuit of Florida, Circuit Court of Hillsborough County.

FRANK M. ARGUIMBAU, as Surviving Partner of the Firm of Schroeder & Bon,
vs.
GEORGE W. ALLEN.

29 FRANK M. ARGUIMBAU, as Surviving Partner of the Firm of Schroeder & Bon,
vs.
GEORGE W. ALLEN, Adm'r of John J. Philbrick.

These causes coming on to be heard upon the demurrers of the plaintiff to the pleas of the defendant filed on March 24th, 1900,

and on January 25th, 1900, in each of said causes, after argument by counsel for the respective parties, the court being advised of its opinion, it is thereupon considered by the court that the said demurrers, as to each of the said pleas demurred to, be and the same are hereby sustained; and it is ordered that the defendant in each of said causes do have until the rule day in February, A. D. 1903, to plead over as he may be advised.

Done and ordered at Tampa, Florida, this 17th day of January, A. D. 1903.

J. B. WALL, Judge.

On the 2nd day of February, 1903, the defendant filed the following amended pleas:

In the Circuit Court, Sixth Judicial Circuit of the State of Florida in and for Monroe County.

30 FRANK M. ARGUIMBAU, as Surviving Partner of Frederick A. Schroeder, Edwin A. Schroeder, and Frank M. Arguimbau, Partners, Doing Business under the Firm Name of Schroeder & Bon,
vs.
GEORGE W. ALLEN, as Administrator of the Estate of John Jay Philbrick. } Assumpsit.

Now comes the defendant, George W. Allen, as administrator of John J. Philbrick, deceased, and, for a plea to the declaration of the plaintiff herein says that at the time of the execution of the notes in plaintiff's declaration mentioned the said John J. Philbrick, George W. Allen and C. B. Pendleton were citizens of Key West and interested in its commercial development, and the said Horace R. Kelly then represented to them that if they would give him the notes aforesaid, together with two other notes of equal amount, he would maintain and operate a cigar factory in Key West for and during a space of three years thereafter and manufacture cigars therein during said period, and the said notes, and each of them, sued upon were executed by the said parties and delivered to the said Horace R. Kelly in consideration that the said Horace R. Kelly should maintain and operate said cigar factory for the manufacture of cigars in Key West during the period aforesaid, and manufacture cigars therein during said period, and for no other consideration, and the said Horace R. Kelly, after the execution and delivery to him of the notes sued upon, and prior to the indorsement or transfer thereof to *the* Horace R. Kelly and Company, Limited, or to the original plaintiffs herein, declined and refused to maintain and oper-
31 ate a cigar factory for the manufacture of cigars in Key West during the said period of three years, and wholly and absolutely discontinued and abandoned the manufacture of cigars in

Key West, and never thereafter manufactured or caused to be manufactured any cigars in Key West, whereby the consideration upon which the said notes were given has wholly failed; and the said Horace R. Kelly and Company, Limited, and the original plaintiffs herein, at the time of the indorsement and transfer to them of the notes sued on, had notice and knowledge of all the matters herein set forth. And this the defendant is ready to verify.

2. And for a further plea to the declaration of the plaintiff the defendant says that the notes sued upon, and each of them, were executed and delivered by the said John J. Philbrick, George W. Allen and C. B. Pendleton to the said Horace R. Kelly in consideration of a promise of the said Horace R. Kelly that he would manufacture cigars at Key West, Florida, and at no other place, for and during the space of three years, and there was no other consideration for the said notes, or either of them, and the defendant alleges that the said promise of the said Horace R. Kelly in consideration of which the said notes were given, was illegal as being in restraint of trade and contrary to public policy; and the defendant further alleges that Horace R. Kelly and Company, Limited, and the original plaintiffs herein, at the time of the indorsement and transfer to them of the notes sued upon, had notice and knowledge of all the matters herein set forth. And this the defendant is ready to verify.

32 3. And for a further plea to the declaration of the plaintiff the defendant says that the notes sued upon, and each of them, were executed and delivered by the said John J. Philbrick, George W. Allen and C. B. Pendleton to the said Horace R. Kelly in consideration that he would comply with and perform a certain contract theretofore in existence, and made and then subsisting between him and one Max T. Rosen, president of the Havana & Key West Cigar Company, Limited, the terms of which are fully known to the plaintiff, and for no other or further consideration. Wherefore the defendant alleges that there was in truth and in fact no consideration for the notes sued upon, or either of them; and the defendant alleges that Horace R. Kelly and Company, Limited, and the original plaintiffs herein, at the time of the indorsement and transfer to them of the notes sued upon, had notice and knowledge of all the matters herein set forth. And this the defendant is ready to verify.

4. And for a further plea to the declaration of the plaintiff the defendant says that the notes sued upon, and each of them, were executed and delivered by the said John J. Philbrick, George W. Allen and C. B. Pendleton to the said Horace B. Kelly solely on the consideration of an agreement and promise of said Horace R. Kelly whereby he undertook that cigars should be manufactured at Key West, Florida, and at no other place, in accordance with and pursuant to the terms of a certain contract to be made between Horace R. Kelly and Company, a corporation which he un-

33 dertook to organize, and the Havana & Key West Cigar Company, Limited, whereby the latter was to manufacture, at its

factory in Key West, cigars to fill all orders for cigars secured by the said Horace R. Kelly & Company, and whereby the said cigars, when so manufactured, were to be removed from the said factory or place where the same were made without being packed in boxes on which should be stamped, indented, burned or impressed into each box, in a legible and durable manner, or in any manner, the number of cigars contained therein and the number of the manufactory in which said cigars had been manufactured, all of which was contrary to law, wherefore the consideration upon which the said notes sued upon were given was illegal; and the defendant alleges that Horace R. Kelly and Company, Limited, and the original plaintiffs herein, at the time of the indorsement and transfer to them of the notes sued upon, had notice and knowledge of all the matters herein set forth. And this the defendant in ready to verify.

5. And for a further plea to the declaration of the plaintiff the defendant says that the notes sued upon, and each of them, were executed and delivered by the said John J. Philbrick, George W. Allen and C. B. Pendleton to the said Horace R. Kelly solely in consideration of an agreement and promise of said Horace R. Kelly whereby he undertook that cigars should be manufactured at Key West, Florida, and at no other place, in accordance with and pursuant to the terms of a certain contract to be made between Horace R. Kelly and Company, a corporation which he undertook to organize, and the
34 Havana & Key West Cigar Company, Limited, whereby the latter was to manufacture, at his factory in Key West, cigars to fill all orders for cigars secured by the said Horace R. Kelly and Company, and whereby the said Havana & Key West Cigar Company, Limited, was not to securely affix, by pasting on each box containing cigars manufactured by or for it, or to affix at all, any label, or a label on which should be printed, besides the number of its manufactiry and the district and State in which it was situated, these words: "Notice.—The manufacturer of the cigars herein contained has complied with all the requirements of law. Every person is cautioned not to use either this box for cigars again or the stamp thereon again, nor to remove the contents of this box without destroying said stamp, under the penalties provided by the law in such cases," all of which was contrary to law, wherefore the consideration upon which the said notes sued upon were given was illegal; and the defendant alleges that Horace R. Kelly and Company, Limited, and the original plaintiffs herein, at the time of the endorsement and transfer of the notes sued upon to them, had notice and knowledge of all the matters herein set forth. And this the defendant is ready to verify.

6. And for a further plea to the declaration of the plaintiff the defendant says that the notes sued upon, and each of them, were executed and deliverod by the said John J. Philbrick, George W. Allen and C. B. Pendleton to the said Horace R. Kelly solely in consideration of an agreement and promise of the said Horace R. Kelly

whereby he undertook that cigars should be manufactured
35 at Key West, Florida, and at no other place, in accordance with and pursuant to the terms of a certain contract to be made between Horace R. Kelly and Company, a corporation which he undertook to organize, and the Havana & Key West Cigar Company, Limited, whereby the latter was to manufacture, at its factory in Key West, cigars to fill all orders for cigars secured by the said Horace R. Kelly & Company, and whereby the said Havana & Key West Cigar Company, Limited, should not enter daily in a book, the form of which was prescribed by the Commissioner of Internal Revenue, or enter at all, an accurate account of the quantity of cigars, stems or cigar boxes, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from its place — manufacture, and that it should not, on or before the tenth day of each and every month, or at all, furnish to the collector of the district a true and accurate abstract, or any abstract, from said book, verified by oath, of all such sales and removals made during the month next preceding, wherefore the consideration upon which the notes sued upon were given was illegal; and the defendant alleges that Horace R. Kelly and Company, Limited, and the original plaintiffs herein, at the time of the endorsement and transfer to them of the notes sued upon, had notice and knowledge of all the matters herein set forth. And this the defendant is ready to verify.

MACFARLANE & GLEN,
Attorneys for Defendant.

STATE OF FLORIDA,
County of Monroe.

36 I, George W, Allen, administrator of the estate of John Jay Philbrick, deceased, being first duly sworn, depose and say that the facts stated in the foregoing pleas are true, as I am informed and believe.

GEORGE W. ALLEN,
As Administrator of the Estate of John Jay Philbrick.

Subscribed and sworn to before me this 2 day of Feb'y, A. D. 1903.

[NOTARIAL SEAL.]

J. M. PHIPPS,
Notary Public.

On the — day of ——, 1903, the plaintiff filed the following demurrers:

STATE OF FLORIDA:

In the Circuit Court in and for Monroe County.

FRANK M. ARGUIMBAU, Surviving Partner of Frederick A. Schroeder, Edwin A. Schroeder, Frank M. Arguimbau, Late Partners, Doing Business under the Firm Name of Schroeder & Bon,

vs.

GEORGE W. ALLEN, Administrator *for* the Estate of John J. Schroeder, Deceased.

} Demurrers.

Now comes the plaintiff by Bisbee & Bedell, his attorneys, and severally demurs to each of the pleas hereinafter mentioned:

Plaintiff demurs to the first plea because it states no facts constituting a defense, and because it shows that the alleged consideration for the notes sued on was an independent contract by Horace
37 R. Kelly, the performance of which could not be made before the maturity of the said notes sued on; and because the said plea does not aver that the said Kelly did not manufacture any cigars in Key West, but impliedly admits he did manufacture cigars at Key West, and the consideration of the said notes was not apportionable.

Plaintiff demurs to the second plea on the ground that the facts thereof constitute no defense, and on the further ground that it does not show that the island of Key West is not large enough to make it impracticable for Horace R. Kelly if he had capital enough, to manufacture cigars enough to supply the demand for cigars for all the civilized and uncivilized world.

And plaintiff demurs to the said third plea,—first, because it does not set forth any facts constituting a defense; because it does not set forth the alleged contract between Rosin and Kelley, and the court cannot say without such contract before it, whether or not it constituted a consideration of the said notes; and because the said plea does not exclude or preclude the conclusion that the said Horace R. Kelley was not under any obligation to the defendant, by virtue of the promise of said Kelley at the time said notes were made to perform the said contract; and because said plea does not show that at the time said notes were made, the said Kelley was under any obligation to the defendant to perform the said contract between Rosin and said Kelley, and because there is nothing
38 in the said plea to establish that there was no consideration for the said notes.

And plaintiff demurs to each of the fourth, fifth and sixth pleas on the grounds, first,—no facts as stated in either constitute any defense; second, that the consideration alleged in each of the said pleas for the notes was the manufacture of cigars at Key West and the mode and manner of such manufacture, or pursuant to the

terms of some contract not then in existence, which the defendant could not have known whether it was legal or illegal, is wholly immaterial to the defendant; third, because the plea does not show that cigars were not manufactured at Key West by or through the procurance of Horace R. Kelly, and because if they were so manufactured defendant received the same consideration, whether the said contract to be made after the said notes were given, was legal or illegal, and for divers other grounds appearing on the face of the said fourth, fifth and sixth pleas.

STATE OF FLORIDA,
County of Duval, } ss:

I, H. Bisbee, being one of the attorneys for the plaintiff in the above entitled action, being first duly sworn, depose and say that the foregoing demurrers are not interposed for delay.

I hereby certify that in my judgment, opinion and belief, the foregoing demurrers are well founded in law.

H. BISBEE,
Of Counsel.

39 On the 27th day of June, 1903, the court, after due notice given, made the following ruling on said demurrers:

In the Circuit Court, Monroe County.

FRANK M. ARGUIMBAU, as Surviving Partner of Schroeder & Bon, vs. GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick, Deceased.	Order Sustaining Demurrer and Final Judgment.

This action was heard upon the several demurrers to the several pleas filed by George W. Allen, as administrator of John J. Philbrick, deceased, on the — day of February, A. D. 1903; and was argued by counsel for the respective parties.

On consideration thereof it is now ordered that each of the said demurrers to each one of the said plans be and they are hereby sustained.

It is further ordered that the clerk of the said court, assess the damages upon the notes sued on and on file, and enter up final judgment thereon for the plaintiff.

June 27, 1903.

J. B. WALL, Judge.

40 On the — day of ——, 1903, the plaintiff filed the following motion to strike certain pleas of the defendant:

STATE OF FLORIDA:

In the Circuit Court in and for Monroe County.

FRANK M. ARGUIMBAU, Surviving Partner of Frederick A. Schroeder, Edwin A. Schroeder, Frank M. Arguimbau, Late Partners, Doing Business under the Firm Name of Schroeder & Bon,

vs.

GEORGE W. ALLEN, Administrator *for* the Estate if John J. Shroeder, Deceased.

} Motion to Strike.

Now comes the plaintiff by Bisbee & Bedell, his attorneys, and moves to strike certain of the last series of pleas filed on the — day of February, 1903,

Plaintiff moves to strike all of the said pleas numbered 1 to 6 inclusive on the ground that they are not verified or sworn to as the law and the rules of the court require.

Plaintiff moves to strike the first of the said pleas on the further ground that it is so inconsistent with all the other pleas except the second, that the proof of the truth of the first plea would
41 prove the falsity of the third to the sixth inclusive, and because the first plea is a repetition of a former plea held bad on demurrer.

Plaintiff moves to strike the third plea on the further ground that the proof of its truth would prove the falsity of the first, fourth, fifth and sixth pleas.

Plaintiff moves to strike the fourth, fifth and sixth pleas on the further ground that they are repetitions of pleas in this action, already held bad on demurrer, and because they are so inconsistent with the first and third pleas that the proof of their truth would prove the falsity of the first and third pleas.

And on further grounds appearing on the face of the said plea.

H. BISBEE,
For Plaintiff.

42 On the 25th day of July, 1903, the court rendered final judgment in the words and figures following:

In the Circuit Court for Monroe County, Florida.

FRANK M. ARGUIMBAU, as Surviving Partner of the Co-partnership Composed of Frederick A. Schroeder, Edwin A. Schroeder, and Frank M. Arguimbau, Doing Business under the Firm Name and Style of Schroeder & Bon,

vs.

GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick, deceased.

And heretofore, to-wit: on this 18th day of May, A. D. 1903, come to the parties to this action, Frank M. Arguimbau, as surviving partner of the co-partnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, lately doing business under the firm name and style of Schroeder & Bon, plaintiff, and George W. Allen, as administrator of the estate of John J. Philbrick, deceased, defendant, by their respective counsel and argued and submitted the several demurrers of the said plaintiff to the several pleas of the said defendant, as administrator as aforesaid, filed herein on the — day of February, A. D. 1903.

Upon consideration whereof, it was ordered by the court that each of the said demurrers to each of the said several pleas be and there were thereby sustained; and that it was thereby further ordered that the clerk of this court assesses the damages upon the notes sued on and now on file; and enter up final judgment
43 thereon for the said plaintiff, as by the order of the said court bearing date the 27th day of June, A. D. 1903, appears of record.

And, the said notes having been this day produced and submitted to the said clerk of the said court, and by him filed, and the damages of the said plaintiff by reason of the breach of the promises contained in said notes over and above his costs and charges by him about this suit in this behalf expended having been by said clerk in pursuance of said order assessed in the sum of eight thousand, three hundred and twenty dollars, and those costs and charges taxed by the clerk at — dollars.

Therefore it is considered that the said Frank M. Arguimbau as surviving partner of the co-partnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, lately doing business under the firm name and style of Schroeder & Bon, do have and recover from the said George W. Allen, as administrator of the estate of John J. Philbrick, deceased, to be levied and made of the goods and chattels lands and tenements of the estate of John J. Philbrick, deceased, in the hands of the administrator to be administered, the damages, costs and charges by said clerk in form aforesaid assessed, and also — dollars for his costs and charges by the court aforesaid now here adjudged to the said Frank M. Arguimbau, as surviving partner of the co-partnership composed of

Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau lately doing business under the firm name and style of Schroeder & Bon, with his assent; which said damages, costs and charges in the whole amount to — dollars, for which let
44 execution issue against the goods and chattels lands and tenements of the estate of John J Philbrick, deceased.

J. B. WALL,
Circuit Judge.

On the 4th day of August, 1903, writ of error issued, which said writ of error, with the certificate of recordation thereof by the clerk of the circuit court for Monroe county, is in the words and figures following:

Writ of Error.

STATE OF FLORIDA, ss:

The State of Florida to the judge of the circuit court of the sixth judicial circuit of the State of Florida in and for Monroe county, Greeting:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our said circuit court before you, between Frank M. Arguimbau, as surviving partner of the co-partnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, doing business under the firm name and style of Schroeder & Bon, as plaintiff, and George W. Allen, as administrator of the estate of John J. Philbrick, deceased, as defendant, manifest error hath happened, as it is said, to the great damage of the said George W. Allen, as administrator of the estate of John J. Philbrick, deceased, as by his complaint appears.

We, willingly that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties
45 aforesaid in this behalf, do command you that, if judgment be therein rendered, you distinctly and openly send the record and proceedings aforesaid with all things touching them, under your seal, together with this writ, to our supreme court of the State of Florida, so that you have the same at Tallahassee on the 12th day of January, A. D. 1904, in our said supreme court to be then and there held, that inspecting the record and proceedings aforesaid, our said supreme court may cause further to be done therein, to correct that error, what of right and according to law should be done.

Witness the Honorable R. Fenwick Taylor, chief justice of the said supreme court, and the seal of the said circuit court, this 4th day of August, in the year of our Lord one thousand nine hundred and three.

Circuit Court Seal.

GEO. W. REYNOLDS,
Clerk of the Circuit Court of Monroe County,
By D. Z. TRILER, Deputy.

I hereby certify that the within writ of error was duly lodged and filed in the circuit court of Monroe county, Florida on the 4th day of August, A. D. 1903, and duly recorded in the minute book of the circuit court in book — at page 672 thereof.

Witness my hand and the seal of the circuit court of
46 Monroe county, Florida, at Key West, this 4th day of August, A. D. 1903.

GEO. W. REYNOLDS,
Clerk Circuit Court of Monroe County, Florida,
By D. Z. TRILER, D. C.

On the 11th day of August, 1903, the defendant filed his supersedeas bond, in the words and figures following:

Know all men by these presents that George W. Allen, as administrator of the estate of John J. Philbrick, deceased, and the Fidelity Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, and duly authorized under the laws of the State of Florida to do business as a surety company, are held and firmly bound unto Frank M. Arguimbau, as surviving partner of the copartnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, doing business under the firm name and style of Schroeder & Bon, in the penal sum of ten thousand dollars, for the payment whereof well and truly to be made they bind themselves and their legal representatives, jointly and severally, firmly by these presents.

Signed and sealed on this 7th day of August, A. D. 1903.

The condition of the foregoing obligation is such that whereas the obligee above named recovered a judgment in the circuit court of Monroe county, Florida, on the 25th day of July, A. D. 1903, against the above bounden George W. Allen, as administrator of the
47 estate of John J. Philbrick, deceased, for the sum of $8,320.00 and the latter desires to sue out a writ of error from the said judgment returnable to the next ensuing term of the supreme court of Florida, to-wit: the January term, A. D. 1904, and further desires that the said writ of error shall operate as a supersedeas of the said judgment.

Now, therefore, if the above named obligors shall well and truly pay the amount of the aforesaid judgment, with interest and costs, if the same shall be affirmed by the appellate court, then this obligation shall become null and void, otherwise it shall remain in full force and virtue.

GEORGE W. ALLEN, [SEAL.]
As Administrator of the Estate of
John J. Philbrick, Deceased.
[CORPORATE SEAL.] FIDELITY DEPOSIT CO. OF MD.,
By E. W. MONROSE, Ag't & Att'y.

On the — day of August, 1903, the defendant filed the following assignment of errors:

Sixth Judicial Circuit of Florida, Circuit Court of Monroe County.

FRANK M. ARGUIMBAU, as Surviving Partner of Schroeder & Bon,
vs.
GEORGE W. ALLEN, as Administrator of John J. Philbrick, Deceased.

Now comes the defendant in the above stated cause, George
48 W. Allen, as administrator of the estate of John J. Philbrick, deceased, by his attorneys Macfarlane & Glen, and hereby makes the following complete assignment of all the errors he intends to rely upon in the appellate court for reversal of the judgment in the above stated cause, viz:

1st. That the court erred in rendering final judgment against the defendant when an issue remained undisposed of, to wit, the issue upon the plea of defendant filed on March 7th, 1893, upon which plaintiff joined issue.

2nd. That the court erred in sustaining plaintiff's demurrer to defendant's first plea filed on January 25th, 1900.

3rd. That the court erred in sustaining plaintiff's demurrer to defendant's first plea filed on March 24th, 1900.

4th. That the court erred in sustaining plaintiff's demurrer to defendant's second plea filed on March 24th, 1900.

5th. That the court erred in sustaining plaintiff's demurrer to defendant's third plea filed on March 24th, 1900.

6th. That the court erred in sustainimg plaintiff's demurrer to defendant's fourth plea filed on March 24th, 1900.

7th. That the court erred in sustaining plaintiff's demurrer to defendant's first amended plea filed in pursuance of leave of the court on the 2nd day of February, A. D. 1903.

8th. That the court erred in sustaining plaintiff's demurrer to defendant's second amended plea filed in pursuance of leave of the court on the 2nd day of February, A. D. 1903.

9th. That the court erred in sustaining plaintiff's demurrer to defendant's third amended plea filed in pursuance of leave of the court on the 2nd day of February, A. D. 1903.

10th. That the court erred in sustaining plaintiff's de-
49 murrer to defendant's fourth amended plea filed in pursuance of leave of the court on the 2nd day of February, A. D. 1903.

11th. That the court erred in sustaining plaintiff's demurrer to defendant's fifth amended plea filed in pursuance of leave of the court on the 2nd day of February, A. D. 1903.

12th. That the court erred in sustaining plaintiff's demurrer to defendant's amended plea filed in pursuance of leave of the court on the 2nd day of February, A. D. 1903.

MACFARLANE & GLEN,
Attorneys for Defendant.

Service of the foregoing assignment of errors accepted this 20th day of August, A. D. 1903.

BISBEE & BEDELL,
Attorneys for Plaintiff.

On the — day of August, 1903, the defendant filed his written direction to the clerk of the circuit court for making up the transcript of the record, in the words and figures following:

Sixth Judicial Circuit of Florida, Circuit Court of Monroe County.

FRANK M. ARGUIMBAU, as Surviving Partner of Schroeder & Bon,
vs.
GEORGE W. ALLEN, as Administrator of John J. Philbrick, Deceased.

50 Now comes the defendant in the above stated cause, George W. Allen, as administrator of the estate of John J. Philbrick, deceased, by his attorneys Macfarlane & Glen, and hereby makes the following written direction to the clerk for making up the transcript of the record in the above stated cause, *viz:*

The said clerk will copy into the said transcript and make a part thereof, the following papers and proceedings, to wit:

1st. Plaintiff's declaration filed on February 5th, 1898.
2nd. Plea of H. L. Stricker, administrator, filed March 7th, 1898.
3rd. Suggestion of substitution of George W. Allen as administrator and order substituting him as defendant made January 31, 1900.
4th. Pleas filed on January 25th, 1900.
5th. Pleas filed on March 24th, 1900.
6th. Demurrers to pleas and replication filed January 16, 1903.
7th. Order on demurrers made on January 17th, 1903.
8th. Amended pleas filed on February 2nd, 1903.
9th. Demurrers to said pleas last mentioned.
10th. Order on said demurrers made June 27th, 1903.
11th. Final judgment rendered July 25th, 1903.
12th. Writ of error as recorded in minutes of court.
13th. *Supersedeas* bond.
14th. Assignment of errors.
15th. This written direction.

51 You will not recite any papers or proceedings in said cause, and you will omit from the said transcript all papers and proceedings not herein directed to be included therein; and you will commence to make up the said transcript on the 31st day of August, A. D. 1903.

MACFARLANE & GLEN,
Attorneys for Defendant.

Service of the foregoing direction accepted this 20th day of August, A. D. 1903.

BISBEE & BEDELL,
Attorneys for Plaintiff.

On the 28th day of August, 1903, the plaintiff filed the following additional written directions to the clerk for making up the transcript of the record:

In the Circuit Court, Monroe County, Florida.

FRANK M. ARGUIMBAU, as Surviving Partner of the Late Firm of Schroeder & Bon,
vs.
GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick.

To the clerk of the circuit court for Monroe county, Florida:

The plaintiff in the above entitled cause, Frank M. Arguimbau, as surviving partner of the copartnership composed of Fred-
52 erick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, lately doing business under the firm name and style of Schroeder & Bon, makes the following additional directions to the clerk for making up the transcript of the record in the above stated cause, viz.:

In addition to the papers and proceedings by defendant directed to be copied into the said transcript and made a part thereof, the said clerk will copy into said transcript and make a part thereof the following papers and proceedings, to wit:

1. Demurrers to pleas filed January 31st, 1900.
2. The suggestions of death of Frederick A. Schroeder and Edwin A. Schroeder, 2½ and orders on such suggestions.
3. Withdrawal of replications filed January 16th, 1903.
4. Withdrawal, by leave of court, or applications including replication to plea of March 7th, 1898.
5. Order allowing withdrawal last mentioned.
6. Motion to strike defendant's pleas of February 2nd, 1903.
7. These additional directions.

BISBEE & BEDELL,
Attorneys for Plaintiff.

53 I, George W. Reynolds, clerk of the circuit court in and for the county of Monroe, State of Florida, do hereby certify that the foregoing pages numbered from one to 51 inclusive contain a correct transcript of the record of the judgment in the case of Frank M. Arguimbau, as surviving partner of the co-partnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, doing business under the firm name and style of

Schroeder & Bon, plaintiffs, against George W. Allen as administrator of the estate of John J. Philbrick, deceased, defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the record and files of my office, that have been directed to be included in said transcript by the written demands of the said parties.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, this 4 day of December, A. D. 1903.

[SEAL.] GEO. W. REYNOLDS,
Clerk of the Circuit Court for the County of Monroe.

54 And on the same day, to-wit: on the 12th day of January, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

GEORGE W. ALLEN, as Adm'r, &c., Plaintiff in Error,
vs.
FRANK M. ARGUIMBAU, as Surviving Partner, &c., Defendant in Error.

This cause is this day submitted to the court upon briefs by counsel for the respective parties, but the court not being advised of its judgment in the premises time is taken to consider thereof.

And afterwards, to-wit: on the 24th day of May, A. D. 1904, the supreme court made an order that the case be set for oral argument on the 31st day of May, 1904, which order is in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

GEO. W. ALLEN, as Administrator, &c., Plaintiff in Error,
vs.
FRANK M. ARGUIMBAU, as Surviving Partner, &c., Defendant in Error.

55 A memorandum for oral argument having been filed in this cause, it is ordered that the same be set for such oral argument on Tuesday, the 31st instant, and the clerk is directed to notify counsel for the respective parties thereof.

And afterwards, to-wit: on the 31st day of May, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

GEO. W. ALLEN, as Administrator, &c., Plaintiff in Error,
vs.
FRANK M. ARGUIMBAU, as Surviving Partner, &c., Defendant in Error.

This cause is this day submitted to the court upon oral argument by counsel for the respective parties (brief having heretofore been filed), but the court not being advised of its judgment in the premises, time is taken to consider thereof.

And afterwards, to-wit: on the 30th day of July, A. D. 1904, the supreme court of Florida filed with the clerk of said court its memorandum decision in the words and figures following, to-wit:

56 In the Supreme Court of Florida, Division A, June Term, A. D. 1904.

GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick, Deceased, Plaintiff in Error,
vs.
FRANK M. ARGUIMBAU, as Surviving Partner of Schroeder & Bon, Defendant in Error.
} Monroe County.

Per Curiam:

This cause coming on for final hearing upon the transcript of the record and briefs of the respective parties, and having been duly considered by division A, and no error being made to appear, it is, therefore, considered, ordered and adjudged by the court that the judgment of the circuit court, to review which this writ of error was prosecuted, be and the same is hereby affirmed at the cost of the plaintiff in error.

And afterwards, to-wit: on the same day, the 30th day of July, A. D. 1904, the supreme court of Florida rendered its judgment in the cause, which judgment is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904, Division A.

57 GEO. W. ALLEN, as Administrator of the Estate of John J. Philbrick, Deceased, Plaintiff in Error,
vs.
FRANK M. ARGUIMBAU, as Surviving Partner of Schroeder & Bon, Defendant in Error.

Upon Writ of Error to a Judgment of the Circuit Court within and for the County of Monroe.

This cause having been submitted to the court at a previous term thereof upon a transcript of the record of the judgment aforesaid and the argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the said judgment; it is, therefore, considered, ordered and adjudged by the court that the said judgment of the circuit court be and is hereby affirmed; and it is further ordered that the defendant in error do recover of the plaintiff in error his costs by him in this behalf expended, which costs are taxed at the sum of —; all of which is ordered to be certified to the court below.

The decision of the court in this cause was this day read and ordered to be filed.

* * * * * * *

R. F. TAYLOR,
Chief-Justice Supreme Court of Florida.

58 And afterwards, to wit, on the 6th day of August, A. D. 1904, the plaintiff in error, by his counsel, filed his petition for a rehearing, which petition is in the words and figures following, to wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick, Plaintiff in Error,
vs.
FRANK M. ARGUIMBAU, as Surviving Partner, &c., Defendant in Error.

To the honorable justices of the supreme court of Florida:

The petition of George W. Allen, as administrator of the estate of John J. Philbrick, deceased, plaintiff in error, in the above stated cause, would respectfully show unto the court as follows:

That on the 30th day of July, A. D. 1904, the court through di-

vision A, rendered a final judgment in the above stated cause affirming the judgment of the court below, and that no opinion was filed by the court so that your petitioner is not advised of the grounds of the said decision.

That in the said cause a certain plea was filed by your petitioner, which appears upon pages 29 to 30 of the transcript of the record in said cause, whereby your petitioner pleaded that the notes sued upon were given solely upon an executory consideration, which had been repudiated by the payee therein, prior to the endorsement and transfer thereof, of which the plaintiff and his predecessors in title had notice.

59 That the said plea was pleaded in pursuance of section 1072 of the Revised Statutes of Florida, which permits a partial as well as a total failure of consideration to be pleaded in all actions upon promissory notes.

That inasmuch as no written opinion was filed in said cause, your petitioner does not know the grounds of the decision of the court in said cause, but your petitioner is advised that his counsel did not call to the attention of the court the provisions of said section 1072 of the Revised Statutes of Florida in connection with the said plea, and your petitioner is advised by his counsel that the said plea, considered in connection with said section of the Revised Statutes and the common law in force in this State, is an absolutely good plea to the said action, and that the court in affirming the decision of the court below must have inadvertently overlooked the true force and effect of the said plea, owing to the failure of his said counsel to properly argue the same in such a manner as to make the full force of the said plea intelligible to this honorable court.

That your petitioner is further advised that the mistake of his said counsel in failing to fully and intelligibly present the said plea to this honorable court, in connection with the section of the Revised Statutes referred to above, arose from the fact, as your petitioner is advised by his counsel, that they did not consider it possible that the judgment of the court below, sustaining the demurrer of the defendant to the said plea upon the grounds set forth in the said demurrer, could by any possibility be sustained by this court.

That your petitioner is further advised by his counsel, and fully believes, that the said plea hereinbefore mentioned, is an absolutely good plea in bar of the plaintiff's action, notwithstanding the fact that owing to the failure of his counsel to properly argue the

60 same, this honorable court has reached a contrary conclusion, without a consideration of the applicability of the said section 1072 of the Revised Statutes in regard to the subject matter thereof.

That your petitioner is further advised, and fully believes, that upon a proper consideration of the said plea, in connection with the provisions of law, statutory and otherwise, applicable thereto, this honorable court could not come to a conclusion other than that the said plea is a good plea in bar of the plaintiff's action, and that the

failure of your petitioner's counsel to fully argue the same arose solely from the fact that they were over-confident of the merit of the said plea.

Wherefore, your petitioner prays for a rehearing of said cause for the purpose of fully presenting the said plea to this honorable court.

And your petitioner will ever pray, &c.

MACFARLANE & GLEN,
Counsel for Petitioner.

And afterwards, to-wit: on the 30th day of November, A. D. 1904, the supreme court made an order denying the petition for rehearing, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904, Division A.

61 GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick, Deceased, Plaintiff in Error,
vs.
FRANK M. ARGUIMBAU, as Surviving Partner of Schroeder & Bon, Defendant in Error.
} Monroe County

A petition for rehearing having been filed in this cause, and the same having been considered, and the court being advised of its judgment in the premises, it is ordered that the prayer of the petition be and the same is hereby denied; and upon written request of counsel for the plaintiff in error it is further ordered that the clerk withhold the mandate herein for 20 days.

And afterwards, to-wit: on the 27th day of December, A. D. 1904, came the plaintiff in error by counsel and filed in the office of the clerk of said supreme court of Florida an assignment of error in the Supreme Court of the United States on writ of error, said assignment of errors being hereto next attached, being as follows:

62 In the Supreme Court of the State of Florida, June Term, A. D. 1904.

GEORGE W. ALLEN, as Administrator of the Estate of John Philbrick, Deceased, Plaintiff in Error,
v.
FRANK M. ARGUIMBAU, as Surviving Partner of the Copartnership Composed of Frederick A. Schroeder, Edwin A. Schroeder, and Frank M. Arguimbau, Doing Business under the Firm Name and Style of Schroeder & Bon, Defendant in Error.

Now comes the plaintiff in error in the above stated cause and files the following as an assignment of the errors he intends to

rely upon in the Supreme Court of the United States on his writ of error prosecuted to the said Supreme Court of the United States in the above stated cause, viz:

1. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the first plea of the defendant filed on March 24th, 1900, was properly sustained, and that the said plea constituted no defense to the suit of the plaintiff under section 3397 of the Revised Statutes of the United States.

2. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the second plea of the defendant filed on March 24th, 1900, was properly sustained, and that the said
63 plea constituted no defense to the suit of the plaintiff under section 3393 of the Revised Statutes of the United States.

3. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the third plea of the defendant filed on March 24th, 1900, was properly sustained, and that the said plea constituted no defense to the suit of the plaintiff under section 3390 of the Revised Statutes of the United States.

4. That the said supreme court of the State of Florida erred in its final judgment renderrd on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the fourth plea of the defendant filed on February 2nd, 1903, was properly sustained, and that the said plea constituted no defense to the suit of the plaintiff under section 3397 of the Revised Statutes of the United States.

5. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the fifth plea of the defendant filed on February, 2nd, 1903, was properly sustained, and that the said plea constituted no defense to the suit of the plaintiff under section 3393 of the Revised Statutes of the United States.

6. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the sixth plea of the defendant filed on February 2nd, 1903, was properly sustained, and that the

said plea constitued no defense to the suit of the plaintiff un-
64 der section 3390 of the Revised Statutes of the United States.

Wherefore in order that the foregoing assignments of error may be and appear of record, the defendant presents the same to the court and prays that such disposition thereof be made as — in accordance with law and the statutes of the United States in such cases made and provided, and the defendant prays a reversal of the judgment in the said cause made and entered by the said court.

HUGH C. McFARLANE AND
JAMES F. GLEN,
Counsel for Plaintiff in Error.

Filed Dec. 27, 1904.

B. B. WILSON,
Clerk Supreme Court.

65 And afterwards, to-wit: on December 27, 1904, came the plaintiff in error, by counsel, and filed in open court before the chief justice his petition for the allowance of a writ of error to said judgment, returnable before the Supreme Court of the United States, according to law, which petition is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida, June Term, A. D. 1904.

GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick, Deceased, Plaintiff in Error,
vs.
FRANK M. ARGUIMBAU, as Surviving Partner of the Copartnership Composed of Frederick A. Schroeder, Edwin A. Schroeder, and Frank M. Arguimbau, Doing Business under the Firm Name and Style of Schroeder and Bon, Defendant in Error.

The above named George W. Allen, as administrator of the estate of John J. Philbrick, deceased, plaintiff in error, conceiving himself aggrieved by the final judgment of the supreme court of the State of Florida, made and entered on the 30th day of July, A. D. 1904, in the above stated cause, whereby it was considered and adjudged by the said supreme court of the State of Florida, that the final judgment of the circuit court of the sixth judicial circuit of Florida in and for Monroe county, should be and was affirmed, does
66 hereby petition the Honorable R. Fenwick Taylor, chief-justice of the said supreme court of the State of Florida, for an order allowing a writ of error in the said cause, to the end that the said judgment of the supreme court of the State of Florida may be reviewed by the honorable Supreme Court of the United States of America, returnable to the said Supreme Court of the United States of America, under and according to the laws of the United

States of America in that behalf made and provided, and also that an order may be made herein fixing the amount of security which the said plaintiff in error shall give and furnish upon the said writ of error, to the end that the same may operate as a supersedeas, and that thereupon all further proceedings in this court be suspended and stayed until the determination of the said writ of error by the Supreme Court of the United States.

And your petitioner will ever pray, &c.

HUGH C. MACFARLANE AND
JAMES F. GLEN,
Counsel for Plaintiff in Error.

Whereupon on the same day the prayer of the petition was granted by an order of the chief-justice, in words and figures as follows, to-wit:

In the Supreme Court of the State of Florida, June Term, A. D. 1904.

GEORGE W. ALLEN, as Administrator of the Estate of John J. Philbrick, Deceased, Plaintiff in Error,
vs.
FRANK M. ARGUIMBAU, as Surviving Partner of the Copartnership Composed of Frederick A. Schroeder, Edwin A. Schroeder, and Frank M. Arguimbau, Doing Business under the Firm
67 Name and Style of Schroeder & Bon, Defendant in Error.

At a stated term, to-wit, the June term, A. D. 1904, of the supreme court of the State of Florida, held at the court room in the city of Tallahassee, Florida, on the 27th day of December, A. D. 1904, upon motion of Hugh C. Macfarlane and James F. Glen, attorneys for the above named plaintiff in error, and upon filing a petition for a writ of error and an assignment of errors, and the judgment of the supreme court of the State of Florida upon which the said writ of error is prayed, in the several respects in which the same is questioned by the said assignment of errors, having denied to the plaintiff in error the validity of a defense or defenses asserted by him under the laws of the United States of America, and the said judgment of the supreme court of the State of Florida, in the several respects in which the same is questioned by the said assignment of errors having proceeded on the sole ground that the respective defenses as pleaded — asserted by the plaintiff in error under the laws of the United States of America should be denied and overruled, and the said judgment of the supreme court of Florida having denied to the plaintiff in error a title, right, privilege or immunity specially set up and claimed by the plaintiff in error under the statutes of the United States of America, it is ordered that a writ of error be and is hereby allowed, to have reviewed in the Supreme Court of the United States the judgment of the said supreme court

of the State of Florida heretofore rendered in said cause, returnable according to law; and the amount of security upon the said writ of error is hereby fixed at the sum of three thousand dollars.

Done and ordered this 27th day of December, A. D. 1904.

R. F. TAYLOR,
Chief-Justice of the Supreme Court
of the State of Florida.

68 And thereafter upon the same day upon presentation to the chief-justice of said petition for the allowance of a writ of error, the same was allowed by the chief-justice, as appears upon the original writ of error accompanying this return; and upon the same day a citation was allowed by the chief-justice as appears upon the original citation accompanying this return to the writ of error aforesaid.

And thereafter on December 31, 1904, and during the said term of the court the original bond of plaintiff in error in this writ of error, approved by the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, was filed in the words and figures as follows, to-wit:

Know all men by these presents, that the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, and duly authorized under the laws of the State of Florida, to do business in the State of Florida, is held and firmly bound unto Frank M. Arguimbau, as surviving partner of the copartnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, doing business under the firm name and style of Schroeder & Bon, in the penal sum of three thousand ($3,000.00) dollars, for the payment whereof well and truly to be made, it binds itself, its successors and assigns firmly by these presents.

Signed and sealed on this the 29th day of December, A. D. 1904.

The condition of the foregoing obligation is such, that whereas, George W. Allen, as administrator of the estate of John J. Philbrick, deceased, has sued out a writ of error from the judgment of the supreme court of the State of Florida, in a certain cause therein pending, wherein he was plaintiff in error and the above named Frank M. Arguimbau, surviving partner as hereinbefore described, was defendant in error, rendered in the June term, A. D.

69 1904, of the said supreme court of the State of Florida, wherein the said court affirmed a certain judgment of the circuit court of the sixth judicial circuit of the State of Florida, in and for Monroe county, the said writ of error being returnable to the Supreme Court of the United States at Washington, on the 28th day of January, A. D. 1905.

Now, if the said George W. Allen as administrator of the estate of John J. Philbrick, deceased, shall prosecute the said writ of error to effect and if he fail to make his plea good, shall answer all damages

and costs, then this obligation shall become null and void, otherwise it shall remain of full force and virtue.

[Seal of Fidelity & Deposit Co. of Maryland.]

FIDELITY & DEPOSIT CO. OF MARYLAND.
D. F. CONOLEY, Att'y. [SEAL.]
E. W. MONROSE, Att'y.

Taken and approved this 31st day of December, A. D. 1904.

R. F. TAYLOR,
Chief-Justice of the Supreme Court of Florida.

70 I, B. B. Wilson, clerk of the supreme court of the State of Florida, *her* hereby certify that the foregoing pages numbered from one (1) to sixty-nine (69) inclusive constitute and contain a full, true and complete transcript of the record and proceedings had, papers filed, rulings made, memorandum decision delivered, judgment rendered and all orders entered in the supreme court of Florida in the above entitled cause of George W. Allen, as administrator of the estate of John J. Philbrick, deceased, plaintiff in error, *vs.* Frank M. Arguimbau, as surviving partner of the copartnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, doing business under the firm name and style of Schroeder & Bon, defendant in error, as appear upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court at Tallahassee, the capital, this 23rd day of January, A. D. 1905.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

71 The foregoing transcript of the record of the proceedings of the supreme court of the State of Florida in the case of George W. Allen, as administrator of the estate of John J. Philbrick, deceased, plaintiff in error, *vs.* Frank M. Arguimbau, as surviving partner of the copartnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, doing business under the firm name and style of Schroeder & Bon, defendant in error, is transmitted to the Supreme Court of the United States in obedience to the writ of error issued herein, the original of which is hereto attached.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk of the Supreme Court of the State of Florida.

72 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George W. Allen, as administrator of the estate of John J. Philbrick, deceased, plaintiff in error, and Frank M. Arguimbau, as surviving partner of the copartnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, doing business under the firm name and style of Schroeder & Bon, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said George W. Allen, as administrator of the estate of John J. Philbrick, deceased, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 28th day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 31st day of December, in the year of our Lord one thousand nine hundred and four.

[Seal U. S. Circuit Court, Northern Dist. of Florida.]

F. W. MARSH,
Clerk United States Circuit Court, Fifth
Circuit and Northern District of Florida,
By J. J. HODGES, Dep. Clerk.

Allowed by
R. F. TAYLOR,
Chief Justice of the Supreme Court of the State of Florida.

[Endorsed:] In the Supreme Court of the United States, October term, A. D. 1904. George W. Allen, as administrator of the estate of John J. Philbrick, deceased, plaintiff in error, *v.* Frank M. Arguimbau, as surviving partner of the copartnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, doing business under the firm name and style of Schroeder and Bon, defendant in error. Writ of error. Filed Dec. 31, 1904. B. B. Wilson, clerk supreme court.

73 UNITED STATES OF AMERICA, *ss:*

To Frank M. Arguimbau, as surviving partner of the copartnership composed of Frederick A. Schroeder, Edwin A. Schroeder, and Frank M. Arguimbau, doing business under the firm name and style of Schroeder & Bon, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Florida, wherein George W. Allen, as administrator of the estate of John J. Philbrick, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable R. Fenwick Taylor, chief justice of the supreme court of the State of Florida, this 31st day of December, in the year of our Lord one thousand nine hundred and four.

B. F. TAYLOR,
Chief Justice of the Supreme
Court of the State of Florida.

By the chief-justice:

[Seal Supreme Court of the State of Florida.]

Attest: B. B. WILSON,
Clerk Supreme Court, State of Florida.

[Endorsed:] In the Supreme Court of the United States, October term, A. D. 1904. George W. Allen as administrator of the estate of John J. Philbrick, deceased, plaintiff in error *v.* Frank M. Arguimbau, as surviving partner of the copartnership composed of Frederick A. Schroeder, Edwin A. Schroeder and Frank M. Arguimbau, doing business under the firm name and style of Schroeder and Bon, defendant in error. Citation on writ of error. Service of this citation is hereby accepted on behalf of the defendant in error therein named. Horatio Bisbee, counsel for defendant in error.

74 In the Supreme Court of the United States, October Term, A. D. 1904.

GEORGE W. ALLEN, as Administrator of the Estate of John Philbrick, Deceased, Plaintiff in Error,
v.
FRANK M. ARGUIMBAU, as Surviving Partner of the Copartnership Composed of Frederick A. Schroeder, Edwin A. Schroeder, and Frank M. Arguimbau, Doing Business under the Firm Name and Style of Schroeder & Bon, Defendant in Error.

Now comes the plaintiff in error in the above stated cause and files the following as an assignment of the errors he intends to rely upon in the Supreme Court of the United States on his writ of error prosecuted to the said Supreme Court of the United States in the above stated cause, viz.:

1. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the first plea of the defendant filed on March 24th, 1900, was properly sustained, and that the said plea constituted no defense to the suit of the plaintiff under section 3397 of the Revised Statutes of the United States.

2. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the second plea of the defendant filed on March 24th, 1900, was properly sustained, and that the said plea constituted no defense to the suit of the plaintiff
75 under section 3393 of the Revised Statutes of the United States.

3. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the third plea of the defendant filed on March 24th, 1900, was properly sustained, and that the said plea constituted no defense to the suit of the plaintiff under section 3390 of the Revised Statutes of the United States.

4. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the fourth plea of the defendant filed on February 2nd, 1903, was properly sustained, and that the said plea

constituted no defense to the suit of the plaintiff under section 3397 of the Revised Statutes of the United States.

5. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the fifth plea of the defendant filed on February 2nd, 1903, was properly sustained, and that the said plea constituted no defense to the suit of the plaintiff under section 3390 of the Revised Statutes of the United States.

6. That the said supreme court of the State of Florida erred in its final judgment rendered on the 30th day of July, A. D. 1904, affirming the judgment of the circuit court in and for Monroe county, Florida, wherein the said supreme court held and adjudged that the demurrer of the plaintiff to the sixth plea of the defendant filed on February 2nd, 1903, was properly sustained, and that the said plea constituted no defense to the suit of the plaintiff under sec-
76 tian 3390 of the Revised Statutes of the United States.

Wherefore in order that the foregoing assignments of error may be and appear of record, the defendant presents the same to the court and prays that such disposition thereof be made as in accordance with law and the statutes of the United States in such cases made and provided, and the defendant prays a reversal of the judgment in the said cause made and entered by the said court.

HUGH C. MACFARLANE AND
JAMES F. GLEN,
Counsel for Plaintiff in Error.

Endorsed on cover: File No. 19,623. Florida supreme court. Term No. 523. George W. Allen, administrator of the estate of John J. Philbrick, deceased, plaintiff in error, *vs.* Frank M. Arguimbau, as surviving partner of the co-partnership composed of Frederick A. Schroeder, Edwin A. Schroeder, and Frank M. Arguimbau, doing business under the firm name and style of Schroeder & Bon. Filed February 1st, 1905. File No. 19,623.